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VENABLE LLP
P.O. BOX 34385
WASHINGTON, DC 20043-9998

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Group 3700

Application Number: 10/777,770
Filing Date: February 13, 2004
Appellant(s): HALLIBURTON ET AL.

Andrew C. Aitken
Reg. No. 36,729
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 11, 2007 appealing from the Office action mailed March 28, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,917,725	Thacher	6-1999
5,882,258	Kelly	3-1999
6,196,920	Spaur	3-2001
5,919,090	Mothwurf	7-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-12 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thacher et al. (U.S. Patent No. 5,917,725) in view of Kelly et al. (U.S. Patent No. 5,882258).

Thacher et al. teach a network tournament data system for electronic games allowing a winner to be determined from a plurality of players (Abstract). Thacher et al.

also allows for downloading winner information, advertising, various messaging and data to modify games to be played (Abstract). Tournament games in Thacher et al. can be single games scattered at various locations (col. 1, lines 64-65) and can be any type of computer run game (col. 2, lines 11-20). Thacher et al. provides a user a menu to select different games (col. 15, lines 55-62) with predetermined entry criteria including a predetermined start time (col. 7, lines 28-31). Upon tournament completion, Thacher et al. determines a winner and stores, distributes and displays winner and rank and game played information (col. 8, lines 1-20). The network tournament system of Thacher et al. can set variable/selectable information transmission times for the system, which would allow transmission times to be set before and after game play. However, Thacher et al. does not explicitly provide specifics as to the mechanics of particular games, such as card games, nor does Thacher et al. display scores on a website. In a related gaming apparatus, Kelly et al. teach a solitaire game (Figure 3 along with the related description thereof), where input and other pertinent information regarding the solitaire game is transmitted between a game unit and a server, including game preferences, game options, game variables or other game pertinent information, including generating random card sequence (col. 7, lines 23-42, col. 10, lines 8-12 & 41-44). The Internet is one form of communication used for connection between the game unit and the server (col. 4, lines 1-4). The solitaire game of Kelly et al. is not Klondike-style solitaire however Kelly et al. clearly discloses of other variations to the described card game in which object or other game pieces are played in a game space can be adapted to the invention (col. 17, lines 25-31 & 58-60, & background related art stated

by Kelly et al. col. 1, lines 13-16), consequently the enclosed game is played similarly to a standard solitaire game by moving cards to a column or an ace stack (col. 9, lines 19-37), a play field background and a card back graphic (Figure 3 along with the related description thereof). A scoring method of Kelly et al. is based on successful moves and time duration of the moves by a player (col. 2, lines 35-38), wherein a game score speed is indicated by an elapsed timer (col. 13, lines 11-30). The solitaire game of Kelly et al. awards a bonus when a column is cleared (col. 13, lines 41-46), clearing all the cards is known as busting a deck. Kelly et al. also teach a solitaire game where a play stack exists for reserving cards for future use and a drawn card can be placed in the reserved play stack if no column positions are open (col. 16, lines 46-47) and a solitaire game where a game pattern comprises a method to end the game when a player does not draw another card (col. 14, lines 38-43). Further, Kelly et al. teach a central server used for inter-device communication (col. 7, lines 23-42), wherein the central server can control all aspects of the game (col. 7, lines 23-42). Server control in Kelly et al. includes unique game pattern per players produced through randomized decks (col. 11, lines 16-24), wherein players can compare scores (col. 4, lines 35-38) and any card game can be used (Abstract and col. 17, lines 25-30). Solitaire only describes one game embodiment of Kelly et al. (col. 2, lines 57-60). One would be motivated to modify the tournament system of Thacher et al. to include the specifics of the games of Kelly et al. as Thacher et al. desirably teaches that any type of game can be applied to the tournament system (col. 2, lines 11-20). Further, Kelly et al. teach individually played games, tracking user scores, play stack features (col. 16, lines 46-47,

furthermore multiple discard play feature is commonly known in the game of Klondike and other solitaire games), a wild card feature (col. 11, lines 7-11), multiple game unit (col. 6-7, lines 65-3), busting a deck feature which is when all the cards are moved to the ace column, allowing users to compare scores for competition that stands as a natural transition to a tournament structure, as taught by Thacher et al. It would have been obvious for one skilled in the art at the time of the invention to modify Thacher et al. to include the game specifics taught by Kelly et al. to provide users with a structured tournament card game system. Furthermore the combination of Thacher et al. and Kelly et al. teaches any game or card game used in the game system discussed above. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a notoriously well-known game such as Spades, which uses the feature of ending a game with a predetermined score, which is also known as sprint game feature. Furthermore, as Kelly et al. teach Internet communication, providing posted scores on a website is considered well within the capabilities of one of ordinary skill in the art, in light of the server stored and retrievable winner and rank information taught by Thacher et al.

In regard to the wildcard substitution of claim 8, Kelly et al. provides wildcards in a game of solitaire to allow for a greater range of movements, and inherently extending the game (col. 111, lines 7-11). If a wildcard is substituted in place of another card in Kelly et al., when the substituted card becomes playable, it is inherent that the card be removed from play as it was substituted by a wildcard. Thus, it would have been

obvious for one skilled in the art at the time of the invention to automatically reveal the next card below the substituted card because the substituted card had already been played by the wildcard.

Regarding claim 6, the combination of Thacher et al. and Kelly et al. teaches any game or card game used in the game system discussed above. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a notoriously well-known game such as Klondike. Furthermore, the multiple discard play feature is commonly known in the game of Klondike and other solitaire games.

Regarding claim 9, the combination of Thacher et al. and Kelly et al. teaches any game or card game used in the game system discussed above. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a notoriously well known game such as FreeCell, which uses the features of multiple future play stacks to allow a card to be usable at any time during the game.

Regarding claim 30, the combination of Thacher et al. and Kelly et al. teaches any game or card game used in the game system discussed above. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a notoriously well-known game such as Spades, which uses the feature of ending a game with a predetermined score, which is also known as sprint game feature.

3. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thacher et al. in view of Kelly et al. as applied to claim 12 above, and further in view of Mothwurf (U.S. Patent No. 5,919,090).

The combination of Thacher et al. and Kelly et al. teaches a gaming system discussed above and additionally teaches players attempting to achieve predetermined goals or tasks (col. 4, lines 58-61 of Kelly et al.) and that game conclusion can be triggered by a particular game state or other condition (col. 5, lines 38-47 of Kelly et al.). However, the combination of Thacher et al. and Kelly et al. does not teach ending a game when exceeding a predetermined score. In a related gaming system, Mothwurf teaches ending a game when a score exceeds a predetermined value (col. 2, lines 43-46). One would be motivated to modify the combination of Thacher et al. and Kelly et al. to use a predetermined score as a trigger to game conclusion.

4. Claims 13 and 15-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thacher et al. in view of Kelly et al. as applied to claim 12 above, and further in view of Spaur et al. (U.S. Patent No. 6,196,920).

The combination of Thacher et al. and Kelly et al. teaches a gaming system discussed above and additionally teaches playing a tournament game where players continue a game until a progressive goal is achieved (col. 7, lines 1-4 of Kelly et al.), verifying a user name and ID, deducting money from a player's account to play a game (col. 4, lines 45-50 of Kelly et al.), collecting scores over a predetermined time period (col. 14, lines 40-50 of Kelly et al.). However, the combination of Thacher et al. and

Kelly et al. does not explicitly teach a first player to cause a finishing game function wins the game, wherein tournaments are available to other players upon completion of a previous game and multiple play stacks from where cards may be moved to ace stacks or columns. In a related gaming device, Spaur et al. teach a tournament game (Figure 3 along with the related description thereof) where a game server controls a game that is downloaded and played by multiple client machines in communication with the game server over communication links including the Internet (col. 2, lines 27-38). Spaur et al. also teach the transfer of a person's identity to a server that is then sent to all game participants (Figure 3 along with the related description thereof), displaying a game result and comparing all game participants' scores (Figure 6 along with the related description thereof), displaying advertisements on a player's computer (Figures 6 and 9 along with the related descriptions thereof), displaying graphic elements including cards (Figure 6 along with the related description thereof), allowing continuing play of the tournament game (Figure 7 along with the related description thereof), a first player to cause a finishing game function wins (col. 3, lines 14-16 and Figures 6, 7 and 10 along with the related descriptions thereof), tournaments being available to other players upon completion of a previous game (col. 3, lines 20-22) and multiple play stacks from where cards may be moved to ace stacks or columns (Figure 3 along with the description thereof). One would be motivated to modify the combination of Thacher et al. and Kelly et al. to include game elements taught by Spaur et al. in the tournament solitaire game as both teach solitaire games played against opponents on the Internet and the additional tournament features of Spaur et al. directed to card games would allow more

seamless game play as desirably taught by Kelly in col. 2, lines 11-23. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the additional tournament features taught by Spaur et al. to provide seamless game play in order to provide a faster, more entertaining, and rewarding game as taught by Kelly et al. (col. 2, lines 11-23).

(10) Response to Argument

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Thacher and Kelly, both pertinent to the art and as noted in the rejection above for claims 1-12, does provide a tournament format for playing solitaire game disclosed by the appellant, thus the combination of Thacher and Kelly would allows for a game of solitaire to be played over a network as described by the appellant submitted claims.

The appellant argues that Kelly does not use a random deck for the gaming purpose. The examiner respectfully disagrees with the appellant, Kelly et al. discloses a number of random 52-card decks by using random seed numbers, which are well known in the art (col. 10, lines 41-44 & col. 11, lines 16-18).

The appellant argues that neither Thacher nor Kelly teach or suggest transmitting of data relating to the sequence of play of the game after the game has been completed in response to recognizing the winning score posted. The examiner respectfully disagrees with the appellant, the network tournament system of Thacher can set variable/selectable information transmission times for the system, which would allow transmission times to be set before and after game play. However, Thacher does not explicitly provide specifics as to the mechanics of particular games, such as card games, nor does Thacher display scores on a website. In a related gaming apparatus, Kelly teach a solitaire game (Figure 3 along with the related description thereof), where input and other pertinent information regarding the solitaire game is transmitted between a game unit and a server, including game preferences, game options, game variables or other game pertinent information, including generating random card sequence (col. 7, lines 23-42, col. 10, lines 8-12 & 41-44). Thus the prior art does disclose all of the limitation stated in the claims.

The appellant also argues that the claimed new tournament concepts are entirely absent from Thacher and Kelly. The examiner respectfully disagrees with the appellant and would like to bring their attention to the following that discloses all of the claimed new tournament concept. Kelly teach individually played games, tracking user scores, play stack features (col. 16, lines 46-47, furthermore multiple discard play feature is commonly known in the game of Klondike and other solitaire games), a wild card feature (col. 11, lines 7-11), multiple game unit (col. 6-7, lines 65-3), busting a deck feature which is when all the cards are moved to the ace column, allowing users to

compare scores for competition that stands as a natural transition to a tournament structure, as taught by Thacher It would have been obvious for one skilled in the art at the time of the invention to modify Thacher to include the game specifics taught by Kelly to provide users with a structured tournament card game system. Furthermore the combination of Thacher and Kelly et al. teaches any game or card game used in the game system discussed above. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a notoriously well-known game such as Spades, which uses the feature of ending a game with a predetermined score, which is also known as sprint game feature.

The appellant argues that feature that enables extended play are not rendered obvious by Thacher and Kelly. The examiner respectfully disagrees with the appellant because, the combination of Thacher and Kelly teach of wildcard substitution in the game of solitaire that allows for a greater range of movements (col. 111, lines 7-11) and inherently extending the game play, because it allows the players to substitute a wildcard during the game whenever the player is stranded on a particular play of the game, thus enabling extended play feature.

The appellant argues that features disclosed in claims 9 and 23; the "future play" feature that is discussed by Kelly is not applicable to Klondike version. The examiner respectfully disagrees, the feature that is disclosed in claim 9 is not just taught by Kelly but by the combination of Thacher and Kelly, and the feature disclosed in claim 23 is also taught by the combination of Thacher, Kelly and Spaur.

> The combination of Thacher and Kelly taught solitaire game which is not Klondike-style solitaire however Kelly clearly discloses of other variations to the

described card game in which object or other game pieces are played in a game space can be adapted to the invention (col. 17, lines 25-31 & 58-60, & background related art stated by Kelly et al. col. 1, lines 13-16), thus the playing method of Klondike-style would be rendered for the stated claims. Regarding the "future play" feature, Kelly also teach of a solitaire game where a play stack exists for reserving cards for future use and a drawn card can be placed in the reserved play stack if no column positions are open (col. 16, lines 46-47). Thus the combination of Thacher, Kelly and Spaur teach all the features disclosed in claims 9 and 23.

The appellant argues that Thacher reference does not suggest its tournament concept would be applicable to electronic card games. And that one skilled in the art would not have been motivated to combine Thacher with Kelly to provide the claimed solitaire tournament game. The examiner respectfully disagrees with the appellant. Even though Thacher does not clearly suggest electronics card game as applicable tournament, electronic card games tournament such as solitaires are well known art, there are many references that can provide evidence of that (Ringo et al. 5,711,715; Kelly et al. 5,816,918 are just few examples that exemplify tournament solitaire).

The appellant argues that Kelly does not discloses of a random sequence of cards, in addition Kelly does not discloses or suggest of (a) future play feature, (b) multiple play stacks feature and (c) playing in tournament structure. The examiner respectfully disagrees with the appellant, Kelly discloses a number of random 52- card decks by using random seed numbers as well known in the art (col. 10, lines 41-44 & col. 11, lines 16-18). Regarding the "future play" feature, Kelly also teach of a solitaire game where a play stacks exists for reserving cards for future use and a drawn card can be placed in the reserved play stacks if no column positions are open (col. 16, lines 46-47).

The appellant argues with the rejection of claim 12, that the Examiner takes the position that the game ending event feature is not critical. However the examiner respectfully disagrees with the appellant and would like to bring the appellant's attention to the above rejection for claim 14, wherein the combination of Thacher, Kelly and Mothwurf disclose of ending a game when the score exceeds a predetermined value (col. 2, lines 43-46), thus the examiner does indeed gives the game ending feature patentable weight depicting it critical. And regarding the motivation to combine the source to create a unique tournament structure, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Thacher, Kelly and Mothwurf does teach of the invention disclosed in claim 14.

Consequently, the rejection is maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Sunit Pandya

Conferees:

Robert Pezzuto

Xuan Thai

XUAN M. THAI
SUPERVISORY PATENT EXAMINER